

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

VOLM COMPANIES, INCORPORATED, )  
et al., )  
Plaintiffs, )  
v. ) Case No. 4:22 CV 373 CDP  
MARK' ANDY, INC., )  
Defendant. )

**MEMORANDUM AND ORDER**

**IT IS HEREBY ORDERED** that plaintiffs' Motion to Amend Pleadings [49], by which plaintiffs move to file a Second Amended Complaint, is **GRANTED**. The motion to amend was filed within the time prescribed by the Court's orders, and plaintiffs are permitted to plead alternative theories of recovery on the facts alleged. While they are not permitted to collect under both breach of contract and breach of warranty claims, I will allow them to plead these claims in the alternative. *Cf. M & I Marshall & Ilsley Bank v. Sader & Garvin, L.L.C.*, 318 S.W.3d 772, 779 (Mo. Ct. App. 2010) (citing cases). At some point, however, "an election must be made." *Trien v. Croasdale Constr. Co.*, 874 S.W.2d 478, 481 (Mo. Ct. App. 1994).

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 3rd day of March, 2023.